

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
LICENSE NO. 117 602  
Issued to: Frank J. HALL

DECISION OF THE VICE COMMANDANT  
UNITED STATES COAST GUARD

2178

Frank J. HALL

This appeal has been taken in accordance with 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 10 August 1978, an Administrative Law Judge of the United States Coast Guard at Long Beach, California, suspended Appellant's license for two months on six months' probation upon finding him guilty of negligence. The specification found proved alleges that while serving as operator of M/V GRANDE, under authority of the license above captioned, on or about 3 July 1978, Appellant negligently allowed passengers to throw trash and debris over the side in violation of the Refuse Act of 1899.

At the hearing Appellant was represented by non-professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the oral testimony of two witnesses.

In defense Appellant introduced the oral testimony of three witnesses, including his own, and three photographs.

At the conclusion of the hearing the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification had been proved. He then served a written order on Appellant suspending all documents issued to Appellant for a period of two months on six months's probation.

The entire decision was served on 11 August 1979. Appeal was timely filed and perfected on 30 November 1978.

FINDINGS OF FACT

On 3 July 1978, Appellant was serving as Operator under authority of his above captioned license aboard M/V GRANDE, a Coast Guard documented and inspected vessel. As Operator, Appellant was in charge of the vessel at all times relevant herein. GRANDE was carrying passengers at all times relevant herein.

On 3 July the vessel carried a chartered sportfishing party of 59 individuals to the vicinity of Catalina Island.

While GRANDE was at anchor in the vicinity of Emerald Bay, Mrs. Betty Forrest, from a passing vessel, noticed several beverage cans and small items of debris alongside GRANDE. Mrs. Forrest did not see anyone throw any trash or debris over the side but testified to the fact that no debris could be seen prior to the arrival of GRANDE. Mrs. Forrest made her observations from a distance of approximately 100 feet.

M/V GRANDE carried several large trash receptacles about the deck which were emptied daily upon return to port. At the commencement of each cruise the passengers were advised that trash was to be deposited within the containers and not thrown over the side. The three deck hands roved about to assist passengers and would admonish anyone found throwing trash over the side. Neither Appellant nor any member of the crew nor the passenger who testified was aware of any debris that was thrown overboard on the day in question.

#### BASES OF APPEAL

This appeal had been taken from the order imposed by the Administrative Law Judge. It is contended that the decision of the Administrative Law Judge is against the weight of the evidence; that rather being held accountable for negligence the Appellant was bound to a standard of strict liability.

APPEARANCE: Grisham, Vandenberg, Nott, Conway & Cannon, Long Beach, California, by Michael G. Nott, Esq.

#### OPINION

There is only meager proof that the debris in question emanated from M/V GRANDE; however, for purposes of argument, I shall assume that there was evidence sufficient to conclude that the trash or debris was tossed overboard by Appellant's passengers.

Negligence is defined by regulating at 46 CFR 5.05-20(a)(2)as:

...the commission of an act which a reasonably prudent person of the same station, under the same circumstances, would not commit, or the failure to perform an act which a reasonably prudent person of the same station, under the same circumstances would not fail to perform.

Therefore, in order to prove the charge it was necessary for the Investigating Officer to prove that Appellant's conduct failed to conform to the standard of care required of a reasonably prudent

operator under the same or similar circumstances. Proof sufficient to confirm that debris was thrown from the GRANDE on the day in question alone is insufficient to prove the charge of negligence.

The Investigating Officer's case consisted of the fact that the vessel under the command of Appellant was in the area with passengers aboard. Presumably the evidence was also sufficient to show that trash was thrown overboard. It was upon these factors that a finding was made; yet, there was no indication in what manner Appellant acted or failed to act in accordance with the required standard of care. The basic issue in contention in the case is whether the Appellant took reasonably adequate measures to prevent the discharge of refuse by passengers.

There is no indication that the trash containers were inadequate for the foreseeable volume of refuse nor that the containers were improperly located. The passengers were advised not to discard debris over the rail. The further admonition that failure in this regard might create licensing or penalty problems for the operator, as suggested by the Administrative Law Judge, would add little to dissuade the casual passenger from littering. Without further evidence, there is insufficient proof to establish a prima facie case of negligence.

In conclusion, the burden of proof rested with the Investigating Officer. Negligence must be proved in the instant case and there is no short cut in making that determination. The fact that refuse may have entered the water in violation of the Refuse Act of 1899 does not allow for a presumption that the master or individual in command was negligent in permitting such act. See Decisions on Appeal 2054 and 2013. To hold otherwise would require holding Appellant strictly responsible without regard to his intent or conduct. I therefore find that the record is void of substantial evidence to support the charge alleged. The order of the Administrative Law Judge must be vacated and the charge dismissed.

#### ORDER

The order of the Administrative Law Judge dated at Long Beach, California, on 10 August 1978, is VACATED and the charge is DISMISSED.

R. H. SCARBOROUGH  
VICE ADMIRAL, U. S. COAST GUARD  
Vice Commandant

Signed in Washington, D.C., this 3rd day of January 1980.

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